REMARKS/ARGUMENTS

Claims 1-36 are currently pending. Claims 1, 13, and 25 are amended herein. Applicant acknowledges receipt of the above-identified Office Action, and respectfully traverses the Office Action in its entirety. Applicant's undersigned representative respectfully requests that, in the event that a Notice of Allowance is not granted in the instant case as a result of the instant response, the Examiner contact Applicant's undersigned representative to schedule an in-person interview to further discuss Applicant's claims and the prior art of record.

REJECTIONS UNDER 35 U.S.C. §112, second paragraph

Claims 1-25 stand rejected under 35 U.S.C. §112, second paragraph as being indefinite. Applicant respectfully traverses, and respectfully asserts that the use of phrases such as "selecting a first set of computer readable instructions" is common practice in claim drafting and is employed to indicate that a first set of computer readable instructions exists. However, in an effort to expedite examination of the instant application, Applicant has amended independent claims 1, 13, and 25. Applicant's amendments having rendered the rejection moot, Applicant respectfully requests that the rejection be withdrawn.

REJECTIONS UNDER 35 U.S.C. §102(e)

Claims 1, 13, and 25 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application publication No. 2005/0044127 to Jaiswal et al. ("Jaiswal"). Applicant respectfully traverses. Applicant's claimed invention is directed to a system, methods, and computer readable media used in a clustered, multiprocessor computing system, whereby a set of computer-readable instructions is associated with a specific cluster, and more specifically with a specific processor within the cluster. As recited in the claims, Applicant's claimed invention facilitates selection of the appropriate processor based, at least in part, on the priority associated with the processor and the cluster of which it is a member.

Jaiswal is directed to dynamic load distribution within a session initiation protocol ("SIP") network. As disclosed in the Abstract and in paragraphs [0001], [0011]-[0018], a SIP network is a network that provides interactive user sessions involving multimedia elements such as video, voice, chat, and gaming (paragraph [0011]), and is used to establish, modify, and terminate multimedia sessions and calls (paragraph [0013]). For a cited reference to anticipate a claim, all elements of the claim must be present in the reference.

It appears from Applicant's undersigned representative's reading of the Office Action that the Office is asserting that the call information (e.g., the calling party's IP address and related information, the receiving party's IP address and related information, etc.) is analogous to the computer-readable instructions recited in Applicant's claims. Applicant respectfully traverses. As recited in Applicant's claims, the computer-readable instructions are executable by the processor to which they are assigned. By contrast, in Jaiswal, the call information defines the parameters used to facilitate the call, and are not executed by a processor.

Still further, should it be argued that the call information is somehow analogous to computer-readable instructions, it is respectfully submitted that paragraph 30 contradicts the drawing of such an analogy. More specifically, paragraph 30 discloses that a processor in an article of manufacture (i.e. a SIP-enabled call controller) executes instructions, and that those instructions tell it to determine a load on a first node and a second node and to direct a transmitting node (i.e. a VOIP-enabled phone) to relay information through one of the first node and the second node based on the load factor. Applicant respectfully submits that Jaiswal clearly discloses that the selected node is merely a conduit (i.e. a relay) through which information flows, and does not execute computer-readable code transmitted thereto as recited in Applicant's claims.

Addressing more specifically the arguments set forth in the instant Office Action, it is argued that Jaiswal teaches associating a processor with a set of computer-readable instructions, and that the first set of computer-readable instructions is disclosed in paragraphs 13, 18, and 19. Applicant respectfully traverses. Paragraph 13 comprises a definition of a SIP network, and more specifically discloses that SIP networks utilize request/response protocols to facilitate communication between a caller and a receiver. As Paragraph 14 further illustrates, SIP protocol is involved with call initiation and termination, with SIP determining the end systems to be used for the session, the communication media and media parameters, and the called party's desire to engage in communication. Once SIP establishes call parameters at the caller and receiver ends of the communication, and handles call initiation and termination. Paragraph 18 discloses that nodes in a SIP network may be equipped with appropriate hardware, software, or firmware necessary to communicate information in accordance with one or more protocols. Paragraph 19 provides a definition of transmitting entity and receiving entity. Applicant respectfully submits that paragraphs 13, 18, and 19 (and, in fact, the entirety of Jaiswal) fail to teach or suggest

associating a processor with a set of computer-readable instructions. In fact, nowhere in Jaiswal is it taught or suggested that computer-readable instructions, executable by the receiving entity, be associated with a processor.

It is further argued in the Office Action that paragraph 60 discloses associating the first processor with the first set of computer-readable instructions. Applicant respectfully traverses. As discussed above, Jaiswal is directed to selecting a SIP-enabled node which is used to relay call creation and call termination information (see, e.g., paragraph 14). Paragraph 60 merely discloses that, in the context of a SIP-enabled network, a location service returns the SIP-enabled server entity with the least load and maximum Q-value, which indicates that the entity has a small load and high priority. It is respectfully submitted that paragraph 60 fails to teach or suggest associating the first processor with the set of computer-readable instruction.

The Office Action also suggests that Applicant's recited "causing the first processor to execute the first set of computer-readable instructions" is disclosed in paragraphs 18 and 27. Applicant respectfully traverses. Paragraph 18 merely discloses that network nodes may be equipped with hardware or software that facilitates communication according to one or more protocols, and defines several such protocols. Paragraph 27 merely discloses that a SIP network comprises a plurality of node types, including servers, transmitters (source nodes), and receivers (destination nodes). Paragraph 27 further discloses the role that server nodes play in a SIP network. Neither paragraph 18 nor paragraph 27 (nor, in fact, the remainder of Jaiswal) teaches or suggests causing a selected first processor to execute a first set of computer-readable instructions, as recited in Applicant's claims. Applicant therefore respectfully requests that the rejection be withdrawn.

Applicant further respectfully submits that the SIP-enabled networking described in Jaiswal is so far afield from the multiprocessor-based systems recited in Applicant's claims that one skilled in the art would not be motivated to look to Jaiswal because it is not analogous art. More specifically, while Jaiswal is directed to load balancing, the underlying architecture employed in Jaiswal renders it inapplicable to a multiprocessor system as recited in Applicant's claims. In Jaiswal, a sender (e.g., an Internet radio station, or a calling telephone) initiates a session with one or more recipients. The sender has knowledge of the recipients before the session is initiated (e.g., by the recipient subscribing to a service), and a connection is made with that recipient. What Jaiswal discloses is that the workload associated with facilitating the

connection is distributed to different SIP servers depending on the current activity level of the respective servers. By contrast, if Applicant's claimed invention were used in a SIP-based telephony system, the result would be that the telephone call would be routed to a random recipient based on whether that recipient was busy or not. Applicant respectfully asserts that Jaiswal is so far unrelated to Applicant's claimed invention that it completely fails to teach or suggest all elements of the claimed invention. Applicant therefore respectfully requests that the Examiner withdraw the rejection.

Applicant further respectfully asserts that Jaiswal teaches away from Applicant's claimed invention. As described above, Jaiswal is directed to a load balancing arrangement through which communications can be achieved between a sender and a recipient. Assuming, without admitting, that Jaiswal's system is analogous to Applicant's claimed invention, Jaiswal should properly be seen as requiring knowledge of both the sender and the recipient before submitting the packet for routing. That would be the equivalent, in Applicant's claimed invention, of knowing the processor to which the instructions should be sent before applying Applicant's claimed invention. This would render Applicant's claimed invention moot, and inherently teaches away from the claimed invention.

Still further, in the instant Office Action, the Examiner asserts that Applicant's undersigned representative's reliance on the fact "that the system has no knowledge of the recipient before taking action" is improper as this fact is not recited in Applicant's claims. While Applicant's undersigned representative concedes that this is not explicitly recited in the claims, it is respectfully suggested that this limitation is inherent and is the fundamental reason that a processor is being <u>selected</u> (i.e., because the processor with which the instructions will be associated is not known at the time). This is as opposed to Jaiswal, in which the destination is known beforehand (e.g., the recipient's phone number, or the destination IP address of the subscriber to an Internet radio station).

REJECTIONS UNDER 35 U.S.C. §103(a)

Claims 1-36 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,105,053 to Kimmel et al. ("Kimmel") in view of U.S. Patent No. 7,191,349 to Kaushik et al. ("Kaushik"). In rejecting the claims, the Examiner asserts that Kimmel teaches that a cluster is selected as a function of its load value, and that Kaushik discloses that the priorities of threads of the cluster is equal to the priority of the cluster. Applicant respectfully

traverses. First, Applicant's claimed invention does not require that the cluster priority be a function of the priority of the processors within the cluster. Therefore, the Examiner's argument is fundamentally flawed, as the specific limitations recited in Applicant's claims are not present in either Kaushik or Kimmel, or the combination thereof.

Furthermore, Applicant respectfully asserts that the Examiner's combination of Kaushik and Kimmel is purely based on hindsight. The Examiner asserts that "Because clusters are the sum of processor, it would be obvious to one of ordinary skill in the art to deduce: [that the priorities of a cluster is a function of the priorities of threads in the cluster]". Applicant respectfully suggests that the Examiner's arguments supporting this assertion, which appear in paragraph 41 of the instant Office Action, are based purely on a selective culling of information from the references, and absent the motivation provided by Applicant's invention, one skilled in the art would not make the logical leap that the Examiner makes in the Office Action. A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. KSR Int'l Co. v. Teleflex, 127 S.Ct 1727, 1741 (2007). As former Chief Judge Markey of the Federal Circuit has stated, "virtually all inventions are 'combinations', and … every invention is formed of 'old elements' …. Only God works from nothing. Man must work with old elements." H.T. Markey, *Why Not the Statute?* 65 J. Pat. Off. Soc'y 331, 333-334 (1983). The factfinder should be aware of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning. KSR Int'l Co. v. Teleflex, 127 S.Ct at 1742. In determining whether a claimed invention is an obvious combination of prior art references, it must be shown there is an apparent reason to combine the known elements in the fashion claimed. Id. at 1741. To facilitate review, this analysis should be made explicit. Id. The Examiner has not advanced a sufficient rationale as to why a person skilled in the art would have been motivated to combine Kaushik and Kimmel in the manner described in the present Office Action, other than that provided by the hindsight of Applicant's patent application. In making the rejection, the Examiner has asserted that one of Applicant's points of novelty is obvious, without any substantiation for this assertion other than the Examiner's own beliefs. Applicant's undersigned representative respectfully requests that the Examiner provide a more detailed factual showing of the obviousness of the claimed invention (e.g., where the prior art teaches assigning a priority to both clusters and the processors within a each cluster), or that the Examiner withdraw the rejection.

RESPONSE
Examiner: **ZHE, Meng Yao**

Serial No. 10/715,699
Atty. Docket No.: **03-010**

CONCLUSION

Having responded to all objections and rejections set forth in the outstanding Office Action, it is submitted that the currently pending claims are in condition for allowance and Notice to that effect is respectfully solicited. Additional characteristics or arguments may exist that distinguish the claims over the prior art cited by the Examiner, and Applicants respectfully preserve their right to present these in the future, should they be necessary. In the event that the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is courteously requested to contact applicant's undersigned representative.

AUTHORIZATION

The Commissioner is authorized to charge any additional fees associated with this filing, and credit any overpayment, to Deposit Account No. 19-3790. If an extension of time is required, this should be considered a petition therefor. If the fees associated with a Request for Continued Examination are filed herewith, this should be considered a petition therefor.

Respectfully submitted,

/ James E. Goepel /
_____

James E. Goepel (Reg. No. 50,851)
Attorney for Applicant

Unisys Corp.
Township Line and Union Meeting Roads
Unisys Way E8-114
Blue Bell, PA 19424
(215) 986-6188

Filed: March 1, 2010